CR 1201 (3)

IN THE HIGH COURT OF JUDICATURE

AT BILASPUR (C.G.) Single Bench

Second Appeal No.520 /2004

APPELLANT : Dr.Smt. Manju Mishra
DEFENDENT aged about 55 years
W/o K.K.Mishra
R/o Budapara, Raipur Tahsil &
District Raipur (C.G.)

VERSUS

RESPONDENTS : 1. Sharad Rao Vakade
PLAINTIFFS 2. Pramod Rao Vakade
3. Vinod Rao Vakade
4. Vishwanath Rao Vakade
All Sons of late Shyam Rao Vakade,
All R/o Village Komakhan, P.S.
Bagbahra, Tahsil & District
Mahasamund (C.G.)
5. Smt. Nalini Jhadhav
W/o Kashi Vishwanath Jhadhav
C/o Vishwanath Jhadhav, Mahila
Polytechnic College, Bairan Bazar,
Raipur, Tahsil & District Raipur (C.G.)

P.R. No. 2421/04 Presented by Shri C.B. Sahu dated 30/11/04

SECOND APPEAL U/S. 100 OF THE CODE OF CIVIL PROCEDURE

Civil suit valued
First appeal valued Rs. 1200/- C.F. Paid Rs. 120/-
Second appeal valued Rs. 1200/- C.F. Paid Rs.120/-

Court Fee paid Rs.120/- (One Hundred twenty only)

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(75)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. 520/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

17-01-2005

Shri C.R.Sahu, Counsel for the appellant.

Heard on admission.

This Second Appeal has been filed by the defendant / tenant against the judgment and decree dated 13-09-2004 passed by the First Additional District Judge, Raipur. In this case the suit filed by the plaintiff for eviction has been decreed under Section 12(1)(d) and 12(1)(i) of the M.P. Accommodation Control Act (hereinafter referred to as the *Act* for convenience).

The facts of the case in brief are that plaintiff Smt. Indu Tai Vakade filed a suit for eviction on averment that she had given the suit house on monthly rent of Rs. 100/- in the year 1972 which was subsequently enhanced to Rs. 500/- per month. However, the defendant stopped paying rent from the year 1989 and was not using the said accommodation for last 4-5 years and as a result of which condition of the house became dilapidated. As the plaintiff required the suit accommodation for her own bona fide need, she terminated the tenancy by giving a notice but even then defendant did not vacate the house. The defendant / appellant denied the plaint allegations and stated that the suit house was given on rent by Vishwanath Rao Vakade on a monthly rent of

GRPRJ—FS/350—12/2000—50,000.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Rs. 100/- and the said house was not required by the plaintiff nor there was any necessity of new construction and the plaintiff wants to get it vacated with a view to sell the same at a higher rate and for this reason he had been threatening her to vacate the suit house and on this ground the suit should be dismissed with exemplary cost of Rs. 15,000/-.

The suit filed by the plaintiff was decreed by the trial Court against which First Appeal was preferred by the appellant on the ground that the plaintiff did not enter in to the witness box and that there was no relationship of landlord and tenant between the plaintiff and the appellant and that the suit has been erroneously decreed on the ground that the suit house was locked for 5-7 years. The appellant also took a ground that the trial Court has not considered the fact that she was appropriately using the accommodation and thus the judgment was based on erroneous appreciation of the evidence and that the independent witness (neighbour), has not been examined in the case. The finding of the trial Court that the condition of the suit house was dilapidated and new construction had become necessary was also erroneous. However, in appeal the respondent supported the judgment of the trial Court. After hearing the parties, the First Appellate Court partly allowed the appeal and the decree of eviction passed under Section 12(1)(g) and 12(1)(h) of the Act was held to be erroneous as from the statement of the witnesses the plaintiff failed to prove that the accommodation was in such a dilapidated

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

condition that it was not safe for human dwelling and it required reconstruction. However, the first appellate Court decreed the suit on the ground that the defendant had locked the house for last 5-7 years which is much more than the period of six months prescribed under Section 12(1)(d) of the Act. This finding is based on the positive evidence led by the plaintiff wherein it has come that the water and electric connection in the suit accommodation has been disconnected and even the property tax was not paid for this period which was the liability of the defendant as per the agreement and that the defendant was residing in some other house situated at Sundar Nagar and he has not led any evidence to contradict the above evidence and thus the appellate Court held that decree passed by the trial Court under Section 12(1)(d) of the Act does not call for any interference. Similarly the appellate Court confirmed the decree passed by the trial Court to the effect that the defendant herself had constructed a house of her own at Sundar Nagar and she is residing in the said house with her family members. This finding is based on admission of the defendant herself, her son Manish and P.W.2 Raghunath and on the basis of the admission of the aforesaid persons both the Courts below have decreed the suit under Sections 12 (1)(d) and 12(1)(i) of the Act.

It is submitted on behalf of appellant that the original plaintiff - Indu Tai Vakade did not enter in to the witness box and on her behalf the general power of attorney holder Vishwanath Rao Vakade who is son of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the original plaintiff has been examined and therefore the adverse inference ought to have been drawn against her particularly in the light of fact that she herself had pleaded that she increased the rent to Rs. 500/- per month. It is also submitted by the appellant / defendant that originally the suit house was let out to one K.K.Mishra on a monthly rent of Rs. 100/- and only because she started paying rent subsequently would not create the relationship of landlord and tenant between the respondent No. 4 and the appellant. The contention of the appellant in this regard has no merit and it was rightly rejected by both the Courts below as the appellant herself admitted that she was residing in the suit house as a tenant and the rent was also paid by the appellant to the landlord / plaintiff. The finding of both the Courts below that the house was locked for a period of 5-7 years and it was not used by the tenant and thus the decree for eviction under Section 12(1)(d) has been passed, is a finding of fact and the same can not be assailed in the Second Appeal. Similarly the finding of both the Courts below that the appellant constructed her own house at Sundar Nagar in which she was residing along with her family members is also a finding of fact and the same can not be assailed in the Second Appeal. Even the concurrent finding of the Court below that there was a relationship of landlord and tenant between the defendant and plaintiff is also a finding of fact which is based on admission of the defendant herself that she used to pay rent to the landlord / plaintiff and therefore I am of the opinion that the impugned judgment and decree passed by the First

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Appellate Court confirming the judgment and decree passed by the trial Court, is based on concurrent finding of fact, and therefore, no substantial question of law warranting interference in this appeal is involved and as such the appeal is liable for dismissal. Accordingly it is dismissed. Sd/- DHIRENDRA MISHRA Judge	

JJO